

REMARKS

Claims 1, 3 to 9 and 19 are pending.

The withdrawal of the 35 U.S.C. §103(a) rejection of claims 1, 2 and 8 to 9 over Bhatti is noted and appreciated.

Claims 1, 3 and 19 were rejected under 35 U.S.C. §102(b) over Blankenship et al.; claims 1 and 4 to 7 were rejected under 35 U.S.C. §103(a) over Dietzsch et al.; and claims 1 and 8 to 9 were rejected under 35 U.S.C. §103(a) over “Applicant’s prior art teaching” and Palmquist.

Claims 1 and 19 are amended to clarify that the carrier gas enhanced with an oxidizing gas is within the melting zone and to correct the Markush group of claim 1.

Blankenship et al. and Dietzsch et al. do not teach or suggest the claim 1 or claim 19 method comprising “fusing... under a gas atmosphere within [a melting] zone comprising at least one carrier gas enhanced with an added oxidizing gas....”¹ Blankenship et al. and Dietzsch et al. do not teach or suggest “a refractory material wall with a protective lining selected from the group consisting of rhenium, osmium, iridium and mixtures thereof” (claim 1). Claims 3 to 9 depend from claim 1.

Further as to claim 4, the oxidizing gas is not an “ambient” gas but rather is a gas within the furnace melting zone. The rejections of claims 1, 3 and 19 under 35 U.S.C. §102(b) over Blankenship et al. and of claims 1 and 4 to 7 under 35 U.S.C. §103(a) over Dietzsch et al. should be withdrawn.

Further, the rejection of claims 5 to 6 must be withdrawn or the PTO must point out where the claims 5 and 6 “clearly met” teachings appear in the references. “[W]hen the PTO asserts that there is an explicit or implicit teaching or suggestion in the prior art, it must indicate where such a teaching or suggestion appears in the reference....” *In re Rijckaert*, 28 USPQ2d 1955, 1957 (Fed. Cir. 1993). See also MPEP §2142

¹ Claim 1 quote. Claim 19 recites substantively the same step of “fusing said SiO₂ material in the

For the above reasons, the rejections of claims 1, 3 and 19 under 35 U.S.C. §102(b) over Blankenship et al. and of claims 1 and 4 to 7 under 35 U.S.C. §103(a) over Dietzsch et al. should be withdrawn.

The rejection of claims 1 and 8 to 9 under 35 U.S.C. §103(a) over “Applicant’s prior art teaching” and Palmquist is a new ground of rejection. For the following reasons, this rejection should be withdrawn.

First, the rejection is based on an improper combination of references. Palmquist discloses a method “for melting thermoplastic material.” (See, e.g., Abstract) The alleged “prior art teaching” and Palmquist provide no motivation to combine a teaching of “the drawing of molten glass to form glass articles” with a method “for melting thermoplastic material.” See *In re Lee*, 277 F.3d 1338, 61 USPQ 2d 1430 (Fed. Cir. 2002). The Final Rejection states (without relying on referenced disclosure) that “[i]t would have been obvious to create the molten glass of the prior art method by using the Palmquist furnace for the advantages that Palmquist discloses.” First, the statement is incorrect. Palmquist discloses no method to “create [the] molten glass.” Palmquist teaches a thermoplastic melting process (See, e.g., Abstract). Second, the present invention does not relate to “the advantages that Palmquist discloses.” The invention relates to “a method for removing and/or reducing the effect of refractory materials contamination” (Specification page 3, lines 8 to 13).

For a combination of references to render an invention obvious, there must be “some teaching, suggestion or incentive supporting the combination.” *In re Geiger*, 815 F.2d 686, 688, 2 USPQ2d 1276, 1278 (Fed. Cir. 1987). The Palmquist reference contains no teaching or suggestion to employ a method “for melting thermoplastic material” for “enhanced thermal efficiency” with a teaching of “a method for removing and/or reducing the effect of refractory materials contamination” in a “method for forming an elongated fused quartz article,” (claims 1 to 9) or with a teaching of “fusing [a] SiO₂ material,” (claim 19). Palmquist fails to provide an “objective teaching... [that] would lead [one skilled in the art] to combine the relevant teachings of the references.” *In re*

melting zone under a gas atmosphere within said zone comprising at least one carrier gas enhanced with

Fritch, 972 F.2d 1260, 1265, 23 USPQ2d 1780, 1783 (Fed. Cir. 1992).

Further even improperly combined, the alleged “prior art teaching” and Palmquist do not teach or suggest claims 1 and 8 to 9. The combination does not teach or suggest “fusing an SiO₂ material under a gas atmosphere within said zone comprising at least one carrier gas enhanced with an added oxidizing gas.” “If examination... does not produce a prima facie case of unpatentability, then without more the applicant is entitled to grant of the patent.” *In re Oetiker*, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992). “When the reference(s) cited by the examiner fail to establish a prima facie case of obviousness, the rejection is improper and will be overturned.” *In re Deuel*, 34 USPQ2d 1210, 1214 (Fed. Cir. 1995).

For all of these reasons, the rejection of claims 1 and 8 to 9 under 35 U.S.C. §103(a) over “Applicant’s prior art teaching” and Palmquist should be withdrawn.

This Amendment should be entered. The Amendment only clarifies the claim 1 group to address the PTO’s Final Rejection comment and to address the new rejection of claim 19. Further, the rejection of claims 1 and 8 to 9 under 35 U.S.C. §103(a) over “Applicant’s prior art teaching” and Palmquist is a new ground of rejection not necessitated by Amendment. Substantively, claims 1, 8 and 9 are identical to claims 2, 8 and 9 as filed. Applicant’s prior Amendment only incorporated the already existing limitations of claim 2 into claim 1.

The Amendment adds no new issues (except with regard to the Palmquist rejection). The Amendment cancels claims, thus reducing the issues on appeal. Desirability of the Amendment became apparent only upon review of the pending Office Action. The Amendment places the application in condition for allowance. Thus, entry of the Amendment is requested under 37 CFR §1.116.

an added oxidizing gas....”

In view of the foregoing amendments and remarks, reconsideration and allowance of claims 1 and 3 to 9 and 19 are respectfully requested. In the event that this Application is not allowed and this Amendment is not entered, Applicant hereby requests a personal examiner interview for an explanation of the new grounds of rejection. Toward that end, Applicants representative will contact the examiner to schedule the interview shortly after filing this Amendment.

Should the Examiner believe that any further action is necessary in order to place this application in condition for allowance, he is requested to contact the undersigned at the telephone number listed below.

Respectfully submitted,



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